

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____	}	
UNITED STATES OF AMERICA	}	
	}	
V.	}	CRIMINAL ACTION
	}	NO. 1:03-CR-10383-RGS
JULIO FRANCO	}	
DEFENDANT	}	
_____	}	

MOTION FOR DISCOVERY

BACKGROUND

The Defendant, Julio Franco, is charged with conspiracy to distribute cocaine and attempted possession of cocaine. The government alleges that in September 2003, the Colombian National Police (hereinafter "CNP") intercepted a conversation between Paulino Salcedo ("Salcedo") and a narcotic trafficker in Boston known as "Ramon". During that conversation, which occurred on September 26, 2003, Ramon was preparing to accept a shipment of cocaine from Salcedo for which Salcedo requested a down payment upon delivery. It was during this conversation that Ramon gave Salcedo the phone number of (617)818-0545. This number was the target for a wiretap warrant that was issued by United States District Court Judge Woodlock on November 7, 2003.

Based upon various conversations that were intercepted pursuant to this warrant, a Volkswagen Jetta was stopped on Route 146 in Lincoln, Rhode Island on November 9, 2003. The vehicle was driven by Jose Rafael Santiago who was a co-defendant to this indictment. A search of this vehicle yielded approximately \$529,000 and a drug ledger. A second vehicle involved was also stopped and the driver Domingo Vega, another co-defendant and a passenger, Mark Osorio, were arrested.

After these arrests, agents from the DEA proceeded to 11 Kings Hill Drive in Lynn, Massachusetts, which was the residence of Mr. Franco and pursuant to a search warrant issued by United States Magistrate Judge Collings, seized a number of items including approximately \$182,889.00 in cash.

Defendant moves this Court to order the government to produce the following discovery, pursuant to Fed.R. Crim.P. 16 (a)(1)(E)(i) and Local Rule 116.2 (A)(2):

1. All documentation pertaining to the applications and issuance of the Colombian Warrants obtained on May 29, 2003 for the payphone assigned telephone number (574)412-2079 and for telephone number (310)505-9843, which was issued September 12, 2003 respectively.

It is based upon the intercepted conversation that occurred between Salcedo and Ramon (alleged to be the Defendant) that occurred on September 26, 2003 that formed the basis of the investigation and subsequent arrest of the Defendant.

In order to make a determination as to the constitutionality of the Colombian wiretap, the Defendant avers that the supporting documentation be provided. In accordance with U.S. v. Angulo-Hurtado, 165 F.Supp.2d 1363 (2001), “[t]he United States Constitution does not normally apply to operations conducted by foreign governments in the enforcement of foreign

law, even if the evidence gathered in such operations is used in the United States proceedings.” However, there are two exceptions in which United States constitutional standards do apply to searches on foreign soil: first, if it is shown that United States law enforcement agents “substantially” participated in the challenged search or that they controlled the operation (joint venture exception); and second, if the foreign officers’ conduct was so egregious that it “shocks the conscience” of the American court. Id. at 1370.

The discovery provided to date is simply insufficient to determine not only if United States participated in the Colombian investigation, but if so, whether the Defendant’s rights were violated.

The Defendant certifies that he has complied with Local Rule 116.3 (F).

Date: February 11, 2008

/s/ Frank D. Camera
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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF, will be sent electronically to all parties on this eleventh day of February 2008.

/s/ Frank D. Camera